No. 3938

United States Circuit Court of Appeals

For the Ninth Circuit

CLALLAM COUNTY, WASHINGTON, WILLIAM A. NELSON, Sheriff of Clallam County, Washington, E. C. STEWART, Treasurer of Clallam County, Washington, and J. O. MORSE, Assessor of Clallam County, Washington

Appellants

vs.

THE UNITED STATES OF AMERICA, and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation

Appellees

Brief of Appellees

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

THOMAS P. REVELLE, United States Attorney, and JOHN A. FRATER, Assistant United States Attorney, Solicitors for United States of America, Appellee, Seattle, Washington.

CAREY AND KERR, and OMAR C. SPENCER, Solicitors for United States Spruce Production Corporation, Appellee, Portland, Oregon.

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Brief of Appellees

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

STATEMENT

This is a suit in equity to remove a cloud from title and to enjoin tax proceedings in Clallam County, Washington, for the years 1919 and 1920 and 1921, affecting the railroad called Spruce Production Corporation Railroad No. 1, an uncompleted saw mill at Port Angeles, and other properties standing in the name of the plaintiff, United States Spruce Produc-

tion Corporation. After trial upon the merits a decree was rendered in favor of the plaintiffs as prayed in the Complaint. The defendants offered no evidence, relying upon the contention that as a matter of law and upon the facts proved, the District Court was without jurisdiction and that there was no case for the plaintiffs.

Although there are several separate assignments of error, the defendants' points may be restated and summarized as follows:

1. That the Court has no jurisdiction.
2. That the United States is neither a necessary nor a proper party.
3. That the cause of action does not arise under a law or the Constitution of the United States, and the suit is between citizens of the same state.
4. That the Complaint does not state facts sufficient, and that the evidence introduced fails to show a cause of action.

A Summary of the evidence in support of the Complaint is set out in the Record and it will serve no good purpose to repeat it all here. The following facts, however, should be expressly noted:

In May, 1918, the President by virtue of the power conferred upon him by the so-called Overman Act, created the Bureau of Aircraft Production and a Division of Military Aeronautics, the executive officer of which was made the Director of Aircraft Production.

On January 29, 1919, subsequent to the Armistice, these two divisions were placed together, forming the Air Service, as then provided for by Army Regulations, functioning under the Director of Air Service, whose title was subsequently (July 11, 1919) changed to Chief of Air Service by Act of Congress approved on that date. This Air Service, with its powers, functions and duties, as then provided by orders and Army Regulations, continued until June 30, 1920, on which date the National Defense Act, Amended, came into effect and provided for the office of Chief of Air Service. Army Regulation No. 95-5, November 17, 1921, Paragraph E. as prescribed by the Chief of Air Service, is as follows:

"I will in accordance with instructions from the Secretary of War, exercise administrative supervision over the liquidation of the Bureau of Aircraft Production and the United States Spruce Production Corporation." (Rec. 99-103.)

The Corporation was created in August, 1918, under directions of John D. Ryan, who was Director of Aircraft Production. (Rec. 72-74.) Its operations have been governed by the instructions given to its officers by the War Department.

Lieutenant-Colonel Charles Van Way, President, and Lieutenant-Colonel Arthur L. Fuller, Comptroller and Treasurer of the Corporation, are army officers assigned to duty with the Corporation by

the War Department and they draw their compensation from the Treasury of the United States. Each holds one share of stock and serves as trustee of the Corporation. The third member of the board, who also holds one share, is Charles H. Carey, a civilian. (Rec. 96-98.)

These persons have each signed a waiver in the following form:

> "For value received, I hereby assign and set over to the Secretary of War of the United States of America, or to his order for the benefit of the United States of America, any and all moneys, property or dividends which are now due me or which may hereafter become due me or accrue to me from any source whatsoever by reason of any stock in United States Spruce Production Corporation, a Washington corporation. It is understood that the share of stock now standing in my name on the books of the Corporation has been issued to me solely for the purpose of qualifying me as a trustee of said corporation." (Rec. 84.)

These trustees of the Corporation have endorsed their shares in blank and turned them back to the Secretary. Certificate No. 8 was, upon organization of the Corporation, issued to the Director of Aircraft Production of the United States for 99993 shares. At the time this certificate was issued, the number of trustees as provided by the Articles of Incorporation was seven. Thereafter the number of trustees was reduced by amendment of the Articles to three; whereupon four shares which were held

by the outgoing trustees were issued on certificate No. 17 to the Director of Aircraft Production of the United States. The certificates are in the hands of the Director of Aircraft Production, lodged for safekeeping with the Chief of Finance of the United States. The physical custody of the qualifying shares held by the three trustees is in the Secretary of the United States Spruce Production Corporation. (Rec. 85.)

Thus, all of the shares are owned or controlled by the United States.

The Corporation has never declared dividends. The operations of the Corporation as a whole show loss, and the total liquidation of all the remaining assets will not be equivalent to the total amount expended. (Rec. 92.)

Although the original Articles of Incorporation gave the Corporation very broad powers, these Articles were amended to confine the powers of the Corporation to those prescribed by Act of Congress authorizing the creation of the Corporation. This was done at a special meeting of the board of trustees, October 23, 1918, and a special meeting of the stockholders, November 1, 1918, at which all of the stock was represented in person or by proxy. The change was in conformity with the suggestion of the Advocate General. (Exhibit 10; Rec. 70.)

Prior to the creation of the Corporation the government activities in aircraft production

were carried on by the Production Division, the Bureau of Aircraft Production, and afterwards the Air Service. These activities included producing aeroplane material from the forests of the Northwest. The Division, comprising some 25,000 officers and men, proceeded to take the necessary steps to produce aeroplane lumber. This was accomplished by the building of railroads into proper stands of timber, chiefly in Lincoln County, Oregon and Clallam County, Washington, and the building of saw mills and cut-up plants for the manufacture and remanufacture of the forest products, by creating depots at Vancouver Barracks for the getting together of aeroplane material and also for the resawing and remanufacturing of material at that point. Forces of laborers and soldiers of the United States Army were organized for the purpose of manning and operating these activities. The laborers employed were chiefly soldier labor.

Prior to the creation of the Corporation a government contract was let to Siems-Carey H. S. Kerbaugh Corporation, which managed the activities in behalf of the government, obtaining titles for right of way and building the railroad known as Spruce Production Corporation Railroad No. 1. Part of the titles had not, however, yet been acquired and the railroad was still uncompleted, when the United States Spruce Production Corporation was organized, in August, 1918. The railroad and saw mill had at that time been partly built by these contrac-

tors. The activities after the creation of the Corporation, were taken over by the latter, the properties and rights being assigned to the Corporation, which thereafter carried on the operations until the Armistice was signed, November 11, 1918. The Corporation's activities were wholly directed to the government's program of production of aeroplane lumber. After the signing of the Armistice its activities were directed to the salvage of its assets and converting them into money and otherwise getting ready to dissolve. After the Armistice there were no operations carried on not directly concerned with the winding up and the liquidation of the Corporation's business and its assets. The Corporation actively functioned from about the first of September, through September, October and part of November up to the signing of the Armistice. At the time the Corporation was created the United States conveyed to the Corporation all of its aeroplane properties and activities. (Exhibit 24; Rec. 75-6.)

After Armistice Day work was done for the completion of the Railroad by laying steel and putting in switches and other things incident to the finishing of the Railroad in the course of construction. There was some timber down on the right of way and two contracts were entered into with C. J. Erickson with respect to cleaning up the down timber. (Rec. 87; Exhibits B and C.) These are the Erickson contracts, relied upon by the appellants,

on page 59 of their brief, as showing that the Corporation has been used for other than war purposes.

There was also a contract with the Puget Sound Mills and Timber Company, February, 1921. This contract covered a period of ten years and contemplated transactions affecting the Railroad. It provided for a method whereby the title to this property could be perfected and put in salable condition, and provided for the hauling of logs of the timber company over the Railroad during a period of ten years in exchange for deeds. (Rec. 80; Exhibit A.) A considerable amount of right of way acquired by the Corporation itself was acquired from the Puget Sound Mill and Timber Company, and this contract covered that transaction. The land was necessary as an integral part of the Spruce Production Railroad No. 1, a considerable part of it. (Rec. 86-7.) This transaction is also relied upon by appellants, on page 59 of their brief, as tending to show that the property of the Corporation has been used for other than war purposes.

These were all the contracts relating to hauling products over this road. (Rec. 81.)

The Corporation also entered into a contract with Clallam Lumber Company for the purchase of logs, in the latter part of 1920. The contention was made by the Clallam Lumber Company that an isolated body of timber at the western terminus of this

Spruce Railroad No. 1 was made valueless to them by reason of the ownership of the Railroad. And in the settlement of the various claims, both on the part of the Spruce Production Corporation and the Clallam Lumber Company the price was set upon this timber, which included some 6,000,000 feet, and it was taken over by the Corporation. The Corporation, as a part of the same transaction, secured from the Clallam Lumber Company a release of claims which had been prosecuted by that Company against the Corporation. The price paid the Clallam Timber Company was three dollars per thousand for that timber, and after holding it a few months, the Corporation sold it to Erickson for five dollars for all species other than hemlock, and two dollars for hemlock. (Rec. 81, 82.) This contract resulted in a complete clearance of title for the western terminus of the Railroad, which was part of the lands acquired by the Corporation under its activities, the title to which was not perfected until this contract was entered into. (Rec. 86.) This contract is relied upon by the appellants as showing that the Corporation engaged in business other than for war purposes. (Appellants' Brief, page 59.)

In creating the Corporation, the Director of Aircraft Production directed, and the trustees of the Corporation authorized, the issuance of debentures to the amount of $25,000,000. These were issued and were delivered to the Registrar, therein named, for the United States. By their provisions they are

to be retired by liquidation of the Corporation, and they bear 5 per cent interest if such interest is earned by the Corporation; they are payable out of the net assets of the Corporation and shall not be payable unless a sum sufficient after liquidation is accumulated to retire them. (Rec. 72-3; Exhibit 15.) Originally it was contemplated that the Allied Governments were to take debentures as well as the United States, but this was not done, as Potter, the acting Director of Aircraft Production, did not accept this suggestion of his subordinate and that plan was never carried out. (Rec. 79.) This is commented upon by appellants at page 57 of their brief, as follows: "Appellees not only failed to show that the United States paid the purchase price when this land was conveyed to the Spruce Corporation, but their evidence shows conclusively that the purchase price was paid by the Corporation to the United States from the proceeds of the sale of the debenture bonds of the Corporation." As we understand the record, no debenture was ever sold, none was issued to any other government, and all that were taken and held by the United States were taken in exchange for cash or its equivalent in the land and other properties conveyed by the Secretary of War to the Corporation. They are all to be repaid out of liquidation by the terms of the debentures, and represent merely a convenient form in handling a transaction between the government and its own agent.

ARGUMENT

This case seems to be controlled by the principle of *King County vs. United States Shipping Board Emergency Fleet Corporation* recently decided by the Court of Appeals, 282 Fed. 950, which holds that property of the United States held by a government corporation is not subject to state tax. Indeed, the Spruce Corporation, which did not engage in commercial business, but was a mere war creation, is even more clearly a pure governmental instrumentality.

As in the cited case, the Corporation held the title of the property taxed, but the entire beneficial interest was in the government, which caused the Corporation to be formed, controlled all of its stock, and furnished all of its capital. (Rec. 92.)

The language used by the Court of Appeals in the case mentioned seems to be applicable here:

> "But here, admittedly, the property is not only held by governmental agency but was acquired with public funds, and was to be used exclusively for public purposes. To hold that it lost its public character because the government chose to have the legal title taken in the name of a corporation which it brought into existence and completely controls for its own convenience, and the entire capital stock of which it owns, would be to sacrifice substance to form."

The opinion of Judge Neterer in the case at bar is set forth in the transcript of record at page 38; and since its rendition an opinion of Judge Wolver-

ton to similar effect has been rendered in *United States Spruce Production Corporation vs. Lincoln County* in the District of Oregon. See also the unreported decision *United States vs. Coghlan,* by Rose, District Judge, in Maryland District, June 29, 1920. These are set out in the appendix to this brief. Compare *Johnson vs. Maryland,* 254 U. S., 51; 41 S. C. 16.

When the government took action it must be deemed to have plenary power and presumed to have all rights necessary to accomplish its purposes in the war.

Dryfoos vs. Edwards, 284 Fed. 596.

If this Corporation is a creature or servant of the United States Government, organized and controlled by federal officers pursuant to Acts of Congress, it seems clear that the United States has a direct interest in the subject matter of the suit and is a proper party plaintiff. If the United States had not joined, it is probable that the appellants would be here urging that the government alone could assert the right of a sovereign to tax exemption.

It surely has the right to make claim that its own property shall not be taken from it by taxation proceedings of a state; and the right to assert in its own courts that, notwithstanding the corporate form, it has an interest as the real owner of the property, and that such property is not subject therefore to state taxation. This principle is settled by the

Debs case, but is illustrated in many other decisions.

In re Debs, 158 U. S. 564; 15 Sup. Ct. 900; 39 L. Ed. 1092.

United States vs. Allen, 179 Fed. 13, at p. 17.

United States vs. Rickert, 188 U. S. 444; 23 S. C. 478; 47 L. Ed. 532.

And see note in Ann. Cases, 1912 D., p. 514.

As to a federal question, the test is whether the suit really and substantially involves a dispute or controversy as to the effect or construction of the Constitution, or an Act of Congress, upon the determination of which the result depends, and which dispute or controversy appears upon the record by a statement in legal and logical form. The inquiry is: Can the suit be decided without deciding a federal question? The case here depends upon the construction of the Acts of Congress involved, and upon the effect of the federal Constitution, and this appears from plaintiffs' own statement of their claim.

What is the effect of the Acts of Congress under which the officers of the United States have created the Corporation, and have caused it to operate; and in view of the provisions of those Acts is the property held by such Corporation property of the United States, to be deemed exempt from taxation under the Constitution? In view of these Acts of Congress is this property, though held by the Corporation in name, nevertheless property belonging

to the United States and exclusively under control of Congress as provided by Article IV, Section 3, subdivision 2, of the Constitution of the United States?

The Constitution of the State of Washington, Section XXVI, expressly exempts from taxation, the following:

(a) Property belonging to the United States.
(b) Property hereafter purchased by the United States.
(c) Property reserved for use of the United States.

And Section 9091, Remington 1915 Codes and Statutes exempts:

"All property whether real or personal belonging exclusively to the United States."

Under Section 3 of Article IV of the Constitution of the United States, Congress has power to make all needful rules and regulations respecting the territory or other property belonging to the United States.

This is exclusive. "It is familiar law that a State has no power to tax the property of the United States within its limits." Opinion of Field, J., in

Wisconsin C. R. Co. vs. Price County, 133 U. S. 496, 504.

Property of the United States, therefore, in whatever manner held, is under the control of Con-

gress. Is property any less the property of the United States when carried by it in the name of a state corporation pursuant to Acts of Congress? And does not the very statement of this legal question involve the provision of the federal Constitution quoted and require construction of these Acts of Congress?

We will not lengthen this argument to analyze the authorities upon state taxation quoted in appellants' brief, for this has been rendered unnecessary by the able opinion in the King County case, and the opinion in the District Court in this case and the others of similar character, that have answered and disposed of appellants' citations. It certainly needs nothing more than an examination of the *Thompson* and *Peniston cases,* so freely quoted from and so much relied upon by appellants, to show that what the court was there dealing with was the case of privately owned companies or agencies, and not the case where the corporation was the functionary and creature of the government, holding property and carrying on solely for a governmental object. To tax the property held in the name of such a corporation is effectively to tax the operations of the government; and therein it is plain that the case differs entirely from *McCulloch vs. Maryland;* for the intimation of Chief Justice Marshall that the decision does not apply "to a tax paid by the real property of the bank in common with the

other real property within the state," has no bearing upon this situation. The various railroad and telegraph and other cases cited and relied upon in appellants' extensive brief, distinguishing between a state tax on the operations and on the property of privately owned corporations, seem far from applicable here. The distinction was long ago made clear by Mr. Justice Gray, who showed that the *McCulloch* and *Osborn* cases, in indicating therein that the bank's land or property might be taxable, had reference to real estate of the bank, or bank stock or other property owned by individuals, and that throughout the discussion both by counsel and court in the McCulloch case "State taxes upon any property of the United States had been treated as not distinguishable in principle from the particular tax whose validity was in controversy," and that "whether the property of the United States shall be taxed under the laws of a state depends upon the will of its owner, the United States, and no state can tax the property of the United States without their consent."

Van Brocklin vs. Tennessee, 117 U. S. 151, at pp. 156-7 and at p. 175.

Now this property belongs to the United States, although it is in the Corporation. The Corporation itself is but a means to accomplish an end. As said by Mr. Justice Strong in the Peniston case: "Exemption of federal agencies from state taxation is

dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or hinder the efficient exercise of their power." A tax upon the property, when the corporation is a privately owned company, would manifestly have no such necessary effect; but clearly a tax upon property when the corporation is solely owned by the government and is operated by it to carry on effectively a foreign war, has such necessary effect. This distinction the appellants fail to see.

If the Corporation's property is taxable in 1919, and 1920 and 1921, it was also taxable when the government was engaged in war, in 1918. It is argued that Congress by authorizing the War Department to use the flexible instrumentality of a state corporate form for its airplane activities thereby intended to release to the state the right to tax the government property accumulated for and used in the war, and so in effect authorized the property to be sold upon tax sales. This is an argument hanging upon a fancied distinction between the government's property and the government's operations under corporate form. There is no such distinction in any proper analysis of the decisions relied upon, for after all this property

belongs to the government though it chooses to carry the title for its own convenience, in the name of a state corporation.

Respectfully,

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OMAR C. SPENCER,
Solicitors for Appellees.

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and
JOHN A. FRATER,
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of Counsel.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Oregon

Opinion of Judge Wolverton

UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation.
Plaintiff.

vs.

LINCOLN COUNTY, ET AL.
Defendants

WOLVERTON, District Judge:

These are suits, two in number, by the United States Spruce Production Corporation against Lincoln County, Oregon, the sheriff and county assessor, to enjoin the attempted collection of taxes assessed against property standing in the name of plaintiff. The first suit involves taxes for the years 1919 and 1920, and the second for 1921. The plaintiff is a corporation created under the laws of Washington, by the Director of Aircraft Production, pursuant to the Act of Congress of July 9, 1918, amending the Act of April 11, 1918 (U. S. Comp. Stat. 1919, Compact Edition Appendix, p. 1771), for purposes hereinafter indicated. This corporation was duly authorized to transact business in the State of Oregon.

Without reference to particular acts of Congress, it is sufficient to say that the President was authorized, within the limits of funds specifically appropriated, to requisition for the government war materials, including plants, etc., and the Secretary of War was authorized to condemn lands and interests therein for military purposes, including

standing and fallen timber, sawmills, camps, logging roads, rights of way, etc., suitable for the effectual production of lumber and timber supplies, or to purchase the same, or enter into contracts for the use thereof, for like purposes; all such power of the President and Secretary of War being referable to war emergencies.

Accordingly, the United States, under the direction of the President and Secretary of War, undertook the construction of certain logging roads in Washington and Oregon, which was begun by the Signal Corps, Aviation Section of the United States Army, and later continued by the Bureau of Aircraft Production, Spruce Production Division of the United States War Department; these being agencies through which the powers vested in the President and the Secretary of War were exercised, in pursuance of Acts of Congress.

For the purposes indicated, the United States, acting through the Signal Corps, entered into a contract with Warren Spruce Company for the construction of the railroads described, and the acquisition of the rights of way. Likewise, the Signal Corps entered into arrangements with the Port of Toledo, and with other persons and corporations, for the acquisition of mills, terminals and other property for war purposes. All these properties were afterwards transferred to the plaintiff by the Warren Spruce Company or the original owners thereof. Additional rights of way and property were acquired by plaintiff, and additional work was done upon said railroad lines by it. The properties concerned are particularly described in the complaint.

It has been determined that the Shipping Board Emergency Fleet Corporation is not a government organization or agency, possessing the attributes of sovereignty in the sense that it is entitled to immunity from suit in the courts, and that suitors

have their ordinary remedies against it without being relegated to the Court of Claims. Sloan Shipyards Corporation et al. vs. United States Shipping Board Emergency Fleet Corporation, and allied cases, advance sheets U. S. Sup. Court, Nos. 308, 376, 526, October term, 1921.

It may be assumed that the United States Spruce Production Corporation occupies like relation to the general government.

Counsel for defendants have filed a very exhaustive and able brief in support of the proposition that the property of the Spruce Production Corporation is not immune from state taxes. Such is the question involved here; not whether it is immune from suit or action, as is the general government.

The cardinal principle upon which the proposition is based is one which has been long established within the purview of the constitution, namely, that a state tax may be lawfully assessed against the property of an agent of the general government, but not against the operations of such agent. This inhibition includes, very naturally, the means to be employed by which such operations are to be made effective for serving the purposes of the general government. To illustrate: By the celebrated case of McCulloch vs. State of Maryland, 4 Wheat. (U. S.) 316, it was held that the State of Maryland could not lawfully, in view of the federal Constitution, levy a tax upon the currency of a bank incorporated by Act of Congress, but that it might tax the real property of the bank. The same doctrine was held and applied in Railroad Company vs. Peniston, 18 Wall. 5, where a tax upon the railroad was upheld. The cases seem to be uniform in support of the principle, which is concretely stated in Thomson vs. Union Pacific Railroad, 9 Wall. 579, 591, in the following language:

> "We fully recognize the soundness of the doctrine, that no state has a 'right to tax the

> means employed by the government of the Union for the execution of its powers.' But we think there is a clear distinction between the means employed by the government and the property of the agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means."

With this understanding of the doctrine, it may be questioned whether counsel's application is sound in the present case. The plaintiff corporation, while a private concern, was utilized as a government agency in prosecuting the exigencies of war. The very property which stands in the name of the agent was employed to meet such exigencies. It was acquired for such purposes, and, if denied its use, the agent would have been helpless. It could not have met the demands upon it for conserving war needs. In short, its operations would have been impeded, if not wholly balked and prevented. Thus, it is obvious that, while the holdings described in the complaint in one sense are the property of the plaintiff, they are the vital means by which the government was enabled to carry out its chief purposes in prosecuting the war to a successful termination. The language in the headnote of Railroad Company vs. Peniston, supra, is apropos and pertinent:

> "The exemption of agencies of the federal government from taxation by the states is dependent, not upon the nature of the agents, nor upon the mode of their constitution, nor upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or hinder the efficient exercise of their power."

It would seem that the tax here sought to be annulled would necessarily affect the very means, instruments and agencies by which the general government was endeavoring to carry into effect its power to carry on war; the agency itself, the plaintiff herein, being exclusively employed through the use and application of such means and property in governmental work. United States vs. Wm. F. Coghlan et al.—a case in the Federal Court for the District of Maryland, unreported.

But, however this may be, the property here standing in the name of the United States Spruce Production Corporation, concededly a governmental agency, is property acquired by funds appropriated by Congress to be used and employed for governmental uses and purposes, and none other. No private person or corporation, except in the capacity of an agent of the government, has any right, title or interest therein. Property in like status has recently been held by the Circuit Court of Appeals for this Circuit to be immune from local or state taxes. King County, Wash. vs. United States Ship. Board E. F. Corp., 282 Fed. 950. The holding is predicated upon the legal conclusion that no permission has been granted the local authorities, by Congress or otherwise, to tax the property of the plaintiff.

Furthermore, the principle is involved, as alluded to in the case cited, that where property, the title to which is in the principal, is immune from taxes, it is likewise immune if the title is standing in the name of an agent or trustee for such principal. See cases cited in the King County case.

The principle, to my mind, is applicable, and conclusive of the controversy. The motion to dismiss will be denied.

IN THE UNITED STATES DISTRICT COURT

District for Maryland

Opinion of Judge Rose

UNITED STATES OF AMERICA

vs.

WM. F. COGHLAN, ET AL.

The County Commissioners for Baltimore County assessed for taxes for the year 1919, certain land standing in the name of the United States Shipping Board Emergency Fleet Corporation, hereinafter called the "Fleet Corporation," and improved by it by the erection thereon of a number of workmen's dwellings, for the use of persons employed in shipbuilding in the vicinity and also certain slips and shipyard shops and appurtenances standing on land belonging to a private Shipbuilding Company.

By the terms of the contract, between the Fleet Corporation and the Shipbuilding Company, the Government constructed or furnished the money for the construction of these slips and buildings. They were to be used by the Shipbuilding Company in building ships for the Government. In certain contingencies, the Shipbuilding Company had the right to buy them at an appraisement. If it did not exercise the privilege, the Government had the right to remove them within a limited time, and if such removal did not take place, they then became the property of the Shipbuilding Company.

The United States filed a Bill in Equity in this Court to annul such assessment and to enjoin the County Commissioners and the Treasurer of Baltimore County from taking any steps to collect the taxes upon such assessment. No request was made for a preliminary injunction, and the case proceeded in ordinary course to final hearing.

It was shown that all the stock of the Fleet Corporation was owned by the Government, and that all it did was done for Government account, and that all the profits which it made would inure to the Government, which would have to stand all the losses. Under such state of facts, it is unnecessary to inquire whether for all purposes the Fleet Corporation is the Government. It suffices that it is a governmental agency, exclusively employed in governmental work and as such, its property is not liable to State taxation.

At the hearing it was stated that since the levy of the tax and the filing of the Bill in this cause, but after some months of the taxing year had expired, the Fleet Corporation sold and conveyed the dwellings and the land upon which they stood, to private interests. Nevertheless, as the tax was assessed for the entire year, and at the time it was assessed, the property was not taxable, the levy must be set aside. In Maryland, so far as I know, there is no authority to impose and collect taxes for a part of the year, and as the result of vacating the original levy the property may escape taxation for the entire year. I do not decide that it will, I will leave such questions to be passed upon by the taxing authorities and the present owners of the land, unembarrassed by anything I may do or say.

The fact that the slips and shops are on land belonging to the Shipbuilding Company, does not so long as the things taxed are the property of an agency of the United States, and are used exclusively for governmental purposes, make them taxable. It is not intended here to intimate any opinion as to what the rights of the State would be if this property were at any time put to other use.

A decree declaring the levy void and enjoining its collection will be passed.